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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 **-oOo-**

9 UNITED STATES OF AMERICA)
10)

11 Plaintiff,)

12 vs)

13 HEATHER CATHERINE TALLCHIEF,)

14 Defendant.)
_____)

CR-S-05-0413-PMP-(6wf)

PLEA MEMORANDUM

15 The United States, by and through Daniel G. Bogden, United States Attorney, and
16 Margaret M. Stanish, Assistant United States Attorney, Margaret M. Stanish, HEATHER
17 CATHERINE TALLCHIEF ("Defendant"), and Defendant's attorneys, Daniel J. Albregts and Robert
18 M. Axelrod, submit this plea memorandum.

19 **I.**

20 **PLEA AGREEMENT**

21 The United States and Defendant have reached the following plea agreement, which
22 is not binding on the court:

23 **A. The Plea**

24 Defendant will plead guilty to the Criminal Information, charging her in Count One
25 with Bank Embezzlement; Count Two with Credit Union Embezzlement; and Count Three with
26 Possession of Fraudulently Obtained Passport, in violation of Title 18, United States Code, Sections

1 656, 657, and 1546, respectively. Defendant will further consent to Forfeiture Allegations One and
2 Two.

3 **B. Additional Charges**

4 The United States Attorney's Office for the District of Nevada ("United States") will
5 bring no additional charge or charges against defendant arising out of the investigation in the District
6 of Nevada which culminated in this Plea Memorandum.

7 **C. Sentencing Guideline Calculations**

8 1. Defendant understands that the Court is required to consider United States
9 Sentencing Guidelines ("U.S.S.G." or "Sentencing Guidelines") among other factors in determining
10 defendant's sentence. Defendant understands that the Sentencing Guidelines are advisory, and that
11 after considering the Sentencing Guidelines, the Court may be free to exercise its discretion to impose
12 any reasonable sentence up to the maximum set by statute for the crimes of conviction.

13 2. With respect to the Bank and Credit Union Embezzlement counts, the parties
14 dispute which edition of the Sentencing Guidelines should be used to determine the advisory guideline
15 range. The defendant reserves her right to argue that the Court should rely on the Sentencing
16 Guidelines, 1992 Edition, when calculating the applicable advisory guideline range. The United States
17 reserves its right to argue that the Court should rely on the Sentencing Guidelines, 2004 Edition or any
18 subsequent amendments thereto when making such calculations.

19 3. With respect to the Possession of Fraudulently Obtained Passport, the parties
20 agree that the base offense level is eight (8) with no other enhancements or upward adjustments
21 pursuant to Section 2L2.2(a) of the Sentencing Guidelines, 2004 Edition.

22 **Government's Sentencing Recommendations**

23 4. Pursuant to USSG §3E1.1, the United States will recommend that Defendant
24 receive a three-level adjustment for acceptance of responsibility unless Defendant (a) fails to make
25 a complete factual basis for the guilty plea at the time it is entered; (b) is untruthful with the Court or
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1 probation officers; (c) denies involvement in the offenses or provides conflicting statements regarding
2 Defendant's involvement; (d) attempts to withdraw the guilty plea; or (e) engages in criminal conduct.

3 5. The parties agree, and the United States will recommend, that the sentences for
4 the embezzlement offenses in Counts One and Two run concurrently.

5 **D. Other Sentencing Matters**

6 1. Defendant agrees that the Court may consider all other relevant conduct
7 whether charged or uncharged, in determining the applicable sentencing guidelines range, the
8 propriety and extent of any departure from that range, and the determination of the sentence to be
9 imposed after consideration of the sentencing guidelines and all other relevant factors.

10 2. The parties agree that the Guideline calculations are based on information now
11 known and could change upon investigation by the United States Probation Office. It is possible that
12 factors unknown or unforeseen by the parties to the plea agreement may be considered in determining
13 the offense level, specific offense characteristics, and other related factors. In that event, defendant
14 will not withdraw defendant's plea of guilty.

15 3. The stipulations in this agreement do not bind either the United States Probation
16 Office or the Court. Both defendant and the United States are free to: (a) supplement the facts by
17 supplying relevant information to the United States Probation Office and the Court, and (b) correct
18 any and all factual misstatements relating to the calculation of the sentence.

19 **E. Fines and Special Assessment**

20 1. Defendant agrees that the Court may impose a fine due and payable
21 immediately upon sentencing.

22 2. Defendant will pay the special assessment of \$100 per count of conviction at
23 the time of sentencing.

24 **F. Restitution**

25 Defendant agrees to make full restitution in an amount to be determined by the Court,
26 which defendant agrees shall include all relevant conduct as determined by the Court. In return for

1 Defendant agreeing to make restitution for relevant conduct, the United States agrees not to bring
2 charges against defendant for the conduct giving rise to the relevant conduct. Defendant understands
3 that any restitution imposed by the Court may not be discharged in whole or in part in any present or
4 future bankruptcy proceeding.

5 **G. Forfeiture**

6 1. Defendant agrees and consents, without further notice to her, to the forfeiture
7 of the assets named in Forfeiture Allegations One and Two of the Criminal Information. Defendant
8 acknowledges that the assets named in Forfeiture Allegations One and Two of the Criminal
9 Information represent, or are traceable to, proceeds of the offenses to which defendant is pleading
10 guilty. Defendant agrees to assert no claim and file no pleading in any administrative or judicial
11 proceeding concerning the forfeiture of such properties, property interests, and other assets and waives
12 any and all requirements concerning notice of such proceedings, including service of process.

13 2. Defendant knowingly and voluntarily waives any and all right to a jury trial on
14 the forfeiture of the aforementioned assets. Defendant knowingly and voluntarily waives all
15 constitutional, legal, and equitable defenses to the forfeiture of the aforementioned assets in any
16 proceeding. Defendant agrees to waive any and all jeopardy defenses and claims of double jeopardy,
17 whether constitutional or statutory, and agrees to waive any and all claims and defenses under the
18 Eighth Amendment to the United States Constitution, including any and all claims of excessive fine,
19 to the forfeiture of assets by the United States.

20 3. Defendant agrees that forfeiture of the aforementioned assets as set forth in this
21 agreement shall not be deemed or treated as satisfaction of any fine, restitution, cost of imprisonment,
22 or any other penalty the Court may impose upon Defendant in addition to forfeiture.

23 **H. Waiver of Appeal**

24 In exchange for the concessions made by the United States in this plea agreement,
25 defendant knowingly and expressly waives the right to appeal any sentence that is imposed within or
26 below the applicable Sentencing Guideline range as determined by the Court, further waives the right

1 to appeal the manner in which that sentence was determined on the grounds set forth in Title 18,
2 United States Code, Section 3742, and further waives the right to appeal any other aspect of the
3 conviction or sentence, including any order of restitution. Defendant reserves the right to appeal any
4 portion of the sentence that is an upward departure or higher than the sentencing guideline range
5 determined by the Court. The defendant further reserves her right to appeal a determination to rely
6 on the Sentencing Guidelines, 2004 or 2005 Editions, to calculate the advisory guideline range for
7 the embezzlement offenses in Count One and Two.

8 Notwithstanding the stipulations in this agreement, the parties are free to argue on
9 appeal and collateral review that the court's sentencing guidelines calculations are not error.
10 However, each party agrees to maintain its view that the above calculation in Section C are consistent
11 with the facts of this case.

12 **I. Additional Promises, Agreements, and Conditions**

13 1. In exchange for the United States entering into this agreement, defendant agrees
14 that (a) the facts set forth in Section IV of this Plea Agreement shall be admissible against defendant
15 under Fed. R. Evidence. 801(d)(2)(A) in the following circumstances: (1) for any purpose at
16 sentencing; and (2) in any subsequent proceeding, including a trial in the event defendant does not
17 plead guilty or withdraws defendant's guilty plea, to impeach or rebut any evidence, argument or
18 representation offered by or on defendant's behalf; and (b) defendant expressly waives any and all
19 rights under Fed. R. Criminal P. 11(f) and Fed. R. Evid. 410 with regard to the facts set forth in
20 Section IV of the Plea Agreement to the extent set forth above.

21 2. The parties agree that no promises, agreements, and conditions have been
22 entered into other than those set forth in this plea memorandum, and not will be entered into unless
23 in writing and signed by all parties.

24 **J. Limitations**

25 This Plea Agreement is limited to the United States Attorney's Office for the District
26 of Nevada and cannot bind any other federal, state or local prosecuting, administrative, or regulatory

1 authority. However, this Plea Memorandum does not prohibit the United States through any agency
2 thereof, the United States Attorney's office for the District of Nevada, or any third party from
3 initiating or prosecuting any civil proceeding directly or indirectly involving defendant, including but
4 not limited to, proceedings under the False Claims Act relating to potential civil monetary liability or
5 by the Internal Revenue Service relating to potential tax liability.

6 II.

7 PENALTY

8 1. The maximum penalties for Bank Embezzlement and Credit Union
9 Embezzlement, in violations of Title 18, United States Code, Sections 656 and 657, respectively, are
10 the same, that is, more than 30 years imprisonment, a fine of not more than \$1 million, or both.

11 2. The maximum penalty for Possession of Fraudulently Obtained Passport in
12 violation of Title 18, United States Code, Section 1546, is 10 years imprisonment, a fine of not more
13 than \$250,000, or both.

14 3. Defendant is subject to supervised release for a term not exceeding five (5)
15 years. Supervised release is a period of time following imprisonment during which defendant will be
16 subject to various restrictions and requirements. Defendant understands that if defendant violates one
17 or more of the conditions of any supervised release imposed, defendant may be returned to prison for
18 all or part of the term of supervised release, which could result in defendant serving a total term of
19 imprisonment greater than the statutory maximum stated above.

20 4. Defendant must pay a special assessment of one-hundred (\$100) for each count
21 of conviction.

22 5. Defendant is required to pay for the costs of imprisonment, probation, and
23 supervised release, unless defendant establishes that defendant does not have the ability to pay such
24 costs, in which case the court may impose an alternative sanction such as community service.

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III.
ELEMENTS

Bank Embezzlement

The essential elements for the crime of Bank Embezzlement in violation of Title 18, United States Code, Section 656, are the following:

1. the defendant was a security guard for an armored security service employed in connection with Bank of America;
2. the defendant intentionally embezzled moneys of the bank to which she had access by virtue of her position as a security guard;
3. the defendant acted with the intent to injure or defraud the bank;
4. the deposits of the bank were insured by the Federal Deposit Insurance Corporation; and
5. the amount of money taken was more than \$1000.

Credit Union Embezzlement

The essential elements for the crime of Credit Union Embezzlement in violation of Title 18, United States Code, Section 657, are the following:

1. the defendant was a security guard for an armored security service employed in connection with Nevada Federal Credit Union;
2. the defendant intentionally embezzled moneys of the credit union to which she had access by virtue of her position as a security guard;
3. the defendant acted with the intent to injure or defraud the credit union;
4. the deposits of the credit were insured by the National Credit Union Share Insurance Fund; and
5. the amount of money taken was more than \$1000.

1 Possession of Fraudulently Obtained Passport

2 1. the defendant knowingly possessed a document prescribed by statute and
3 regulation for entry into the United States, that is a United Kingdom passport; and

4 2. the defendant knew that the document was procured by means of false statement
5 or fraud.

6 **IV.**

7 **FACTS THAT SUPPORT GUILTY PLEA**

8 1. Defendant is pleading guilty because she is guilty of the charged offenses.

9 2. In pleading to the offenses, Defendant acknowledges that if she elected to go
10 to trial instead of entering this plea, the United States could prove facts sufficient to establish her guilt
11 beyond a reasonable doubt.

12 3. Defendant specifically admits and declares under penalty of perjury that all of
13 the facts set forth below are true and correct:

14 4. At all times relevant, TALLCHIEF was employed as an armed security guard
15 and driver by Loomis Armored, Inc., which provided security personnel to protect and transport the
16 moneys of various financial institutions and other businesses located in Las Vegas, Nevada. During
17 the commission of the embezzlement, TALLCHIEF did not remove her gun from its holster, brandish,
18 display, or otherwise threaten any person with the gun.

19 5. On October 1, 1993, TALLCHIEF was assigned to drive and guard a Loomis
20 security vehicle carrying the United States currency entrusted to Loomis Armored, Inc., by Bank of
21 America, Nevada Federal Credit Union, and other business entities. TALLCHIEF and her two co-
22 workers were tasked with delivering the money to various customers of the financial institutions,
23 including stocking the ATM machines located at the customers' facilities.

24 6. At approximately 8:15 a.m. on October 1, 1993, TALLCHIEF dropped off the
25 two other security guards in the valet parking area of Circus, Circus Hotel and Casino where
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1 they entered the casino to stock currency in ATM machines. TALLCHIEF was suppose to drive to
2 the front of the casino to pick-up her co-workers and continue their delivery route. Instead,
3 TALLCHIEF drove to a garage where she concealed the Loomis vehicle.

4 7. In the garage, TALLCHIEF and her co-schemer, Roberto Ignacio Solis, packed
5 the money into containers for transportation. Thereafter, TALLCHIEF and Solis, wearing disguises
6 and assuming fictitious identities, fled the State of Nevada and later fled the United States to avoid
7 arrest and prosecution. TALLCHIEF continued to reside overseas, under fictitious identities,
8 including the name of Donna Marie Eaton, until on or about September 15, 2005, when she
9 surrendered to the U.S. Marshall's in Las Vegas, Nevada.

10 8. TALLCHIEF embezzled a total of approximately \$2,947,383, including
11 \$2,395,040 from Bank of America and \$509,363 from Nevada Federal Credit Union. At the time of
12 the embezzlement, the Federal Deposit Insurance Corporation insured the deposits of Bank of America
13 while the National Credit Union Share Insurance Fund insured the deposits of Nevada Federal Credit
14 Union. At all times relevant, TALLCHIEF acted with the intent to defraud and injure the financial
15 institutions and their armored courier service, Loomis Armored, Inc.

16 9. Between on or about September 12, 2005, and September 15, 2005,
17 TALLCHIEF knowingly possessed a document prescribed by statute and regulation for entry into the
18 United States, that is a United Kingdom passport, No. 025590621, in the name of Donna Marie Eaton.
19 In or about February 1997, TALLCHIEF knowingly caused the United Kingdom Passport Agency to
20 issue said passport based on false identification information and documents. On or about September
21 12, 2005, TALLCHIEF possessed and used the fraudulently obtained passport to enter the United
22 States at a port of entry in Los Angeles, California. Thereafter, she traveled to Las Vegas, Nevada,
23 in possession of said passport. At all times relevant, TALLCHIEF knew that the passport was
24 fraudulently obtained.
25
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V.

ACKNOWLEDGMENT

1. Defendant, acknowledges by defendant's signature below that defendant has read this Memorandum of Plea Agreement, that defendant understands the terms and conditions, and the factual basis set forth herein, that defendant has discussed these matters with defendant's attorney, and that the matters set forth in this memorandum, including the facts set forth in Part IV above are true and correct.

2. Defendant acknowledges that defendant has been advised, and understands, that by entering a plea of guilty defendant is waiving, that is, giving up, certain rights guaranteed to defendant by law and by the Constitution of the United States. Specifically, defendant is giving up:

a. The right to proceed to trial by jury on the original charges, or to a trial by a judge if defendant and the United States both agree;

b. The right to confront the witnesses against defendant at such a trial, and to cross-examine them;

c. The right to remain silent at such trial, with such silence not to be used against defendant in any way;

d. The right, should defendant so choose, to testify in defendant's own behalf at such a trial;

e. The right to compel witnesses to appear at such a trial, and to testify in defendant's behalf; and,

f. The right to have the assistance of an attorney at all stages of such proceedings.

3. Defendant, defendant's attorney, and the attorney for the United States acknowledge that this Plea Memorandum contains the entire agreement negotiated and agreed to by

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1 and between the parties, and that no other promise has been made or implied by either defendant,
2 defendant's attorney, or the attorney for the United States.

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4 DANIEL G. BOGDEN
United States Attorney

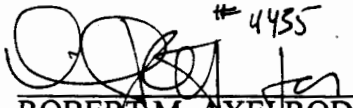
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DATED

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MARGARET M. STANISH
Assistant United States Attorney

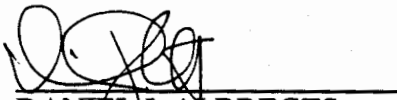
8 10/27/05
DATED

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HEATHER CATHERINE TALLCHIF
Defendant

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11 10/27/05
DATED

12  #4455
ROBERT M. AXELROD
Counsel for Defendant

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14 10/27/05
DATED

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DANIEL J. ALBREGTS
Local Counsel for Defendant